

FILED

OCT 03 2005

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**CLERK'S OFFICE
U. S. DISTRICT COURT
EASTERN MICHIGAN**

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MITCHELL D. SPROESSIG,

Petitioner,

v.

Civil No. 04-CV-71625-DT
HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

ANDREW JACKSON,

Respondent,

**OPINION AND ORDER GRANTING THE MOTION
FOR A CERTIFICATE OF APPEALABILITY**

On September 20, 2005, the Court issued an opinion and order denying the petition for writ of habeas corpus. Petitioner has now filed a motion for issuance of certificate of appealability. For the reasons stated below, the Court will GRANT the motion for a certificate of appealability.

An appeal may not be taken from the final order of a district court denying a motion filed pursuant to 28 U.S.C. § 2254 unless a certificate of appealability issues. 28 U.S.C. § 2253(c)(1)(A). In order to issue a certificate of appealability, the district court must find that the Petitioner has made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude

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the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322 (2003).

As this Court has previously indicated: "[T]he Court's ego tells it that all reasonable jurists would agree with its resolution of the issues raised by Petitioner. The Court's experience, however, is to the contrary. Thus, the Court's belief in the correctness of its decision should not insulate that decision from further review." *Hargrave v. McKee*, 2005 WL 1028183, * 1 (E.D. Mich. April 25, 2005)(citing *Taylor v. Howes*, 26 Fed. Appx. 397, 399 (6th Cir.2001)). "[B]ecause the Court is not infallible and does not believe that its decision should be insulated from further review, the Court finds that reasonable jurists could find it debatable whether Petitioner has made a 'substantial showing of the denial of a constitutional right.'" *Id.* (citing § 2253(c)(2)).

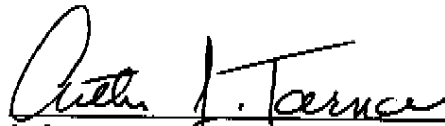
Therefore, the Court certifies the following issues for appeal:

- I. Conviction obtained by unconstitutional in-court identification which should be suppressed re: invalid pretrial procedures.
- II. Conviction obtained in violation of due process right to neutral, detached judge and right of confrontation by judicial misconduct.
- III. Conviction obtained by unconstitutional failure of prosecution to disclose evidence favorable to petitioner.
- IV. Conviction obtained in violation of due process right to fair trial when jury given inadmissible evidence during deliberations.

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ORDER

Based upon the foregoing, IT IS ORDERED that the motion for a certificate of appealability is **GRANTED**.



HON. ARTHUR J. TARNOW
UNITED STATES DISTRICT COURT

DATED: OCT 03 2005

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